

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-3, 5-7, 9-21, 24-26, 28, and 30-34 are pending in the application, with claims 1, 18, and 24 being the independent claims. Claims 1, 3, 5, 7, 9, 11-21, 24, 28, 32, and 33 are sought to be amended. Claims 4, 8, 27, and 29 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Applicants reserve the right to prosecute similar or broader claims, with respect to the cancelled and/or amended claims, in the future. These changes are believed to introduce no new matter, and their entry is respectfully requested.

The claims presented in this Application should be interpreted solely based on the file history of this Application, not the file history of any predecessor or related application. With respect to this application, Applicants hereby rescind any and all disclaimers of claim scope made in any parent application(s), any predecessor application(s), and any related application(s). The Examiner is advised that any previous disclaimer of claim scope, if any, and any references that allegedly caused any previous disclaimer of claim scope, may need to be revisited. Nor should any previous disclaimer of claim scope, if any, in this Application be read back into any predecessor or related application.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1-9, 11, 12, 24, 25, and 27-30

Claims 1-9, 11, 12, 24, 25, and 27-30 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the United States Patent No. 6,650,658 to Mueller et al. ("Mueller") in view of United States Patent Publication No. 2003/-128669 to Lacey, III ("Lacey"), ITU-T Recommendation G.992.3 ("G.992 Specification"), and United States Patent No. 6,535,505 to Johnson et al. ("Johnson"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

Applicants have amended independent claim 1 to substantially incorporate most of the features that were previously recited in dependent claims 4 and 8. Applicants have amended independent claim 24 in a substantially similar manner. For example, Applicants have amended independent claim 1 to recite at least the features of "*(b) selecting a first set of favorable modes of operation from among the set of possible modes of operation using a first level of priority-based selection based on priorities assigned to the annexes*" and "*(c) selecting a second set of favorable modes of operation from among the first set of favorable modes of operation using a second level of priority-based selection based on priorities assigned to the protocol standards.*" These newly incorporated features further clarify Applicants' narrowing down process. In particular, these newly incorporated features further narrow down "*the set of possible modes of operation supported by the at least two modems*" by selecting "*a first set of favorable modes of operation from among the set of possible modes of operation*" and "*a second set of favorable modes of operation from among the first set of favorable modes of operation*"

operation," each of which are priority-based selections based "*on priorities assigned to the annexes*" and "*priorities assigned to the protocol standards,*" respectively.

The combination of Mueller, Lacey, the G.992 Specification, and Johnson does not teach or suggest these newly added features of independent claims 1 and 24. The Office Action correctly acknowledges that Mueller, Lacey, the G.992 Specification alone, or any combination thereof, does not "explicitly teach selecting from a number of favorable modes of operation." (Office Action, p. 5.)

The Office Action alleges Johnson teaches or suggests a multiple step narrowing down process to determine the set of favorable modes of operation from the set of possible modes of operation. (Office Action, p. 7.) In particular, the Office Action alleges column 5, lines 18-35, of Johnson teaches or suggests at least the features of "*selecting a second set of favorable modes of operation from among the first set of favorable modes of operation using a second level of priority-based selection based on priorities assigned to the protocol standards*" that were incorporated from dependent claim 8 into independent claim 1. (Office Action, p. 7.) However, this passage of Johnson that was cited by the Examiner describes criteria for choosing the "best" communication path when multiple communications paths are tied for "best." (Johnson, 5:18-35.) This passage of Johnson does not disclose criteria for narrowing down the communications paths to determine the "best" communication path as alleged in the Office Action. Rather, this passage of Johnson merely determines how to determine the "best" communication path when multiple communication paths are tied for "best."

Nowhere does Johnson teach or suggest at least the features of "*selecting a first set of favorable modes of operation from among the set of possible modes of operation*

using a first level of priority-based selection based on priorities assigned to the annexes" and/or "*selecting a second set of favorable modes of operation from among the first set of favorable modes of operation using a second level of priority-based selection based on priorities assigned to the protocol standards*" as recited by independent claim 1. Johnson merely describes "the 'best' communication path is determined by the consideration of the factors listed... in [it's] 'Background'." (Johnson, 5:7-9.) None of the factors listed in the Background of Johnson disclose "*priorities assigned to the annexes*" and/or "*priorities assigned to the protocol standards*" as recited by independent claim 1. Additionally, none of the factors listed in the Background of Johnson, as well as elsewhere in Johnson, disclose at least the features of "*a first level of priority-based selection*" and/or "*a second level of priority-based selection*" as recited by independent claim 1.

Therefore, Johnson does not teach or suggest at least the features of "*selecting a first set of favorable modes of operation from among the set of possible modes of operation using a first level of priority-based selection based on priorities assigned to the annexes*" and/or "*selecting a second set of favorable modes of operation from among the first set of favorable modes of operation using a second level of priority-based selection based on priorities assigned to the protocol standards*" as recited by independent claim 1. Applicants have amended independent claim 24 to recite substantially similar features as independent claim 1 which are likewise not taught or suggest by Johnson. Mueller, Lacey, and the G.992 Specification does not teach or suggest these missing features of independent claims 1 and 24 nor does the Office Action so allege, therefore the combination of Mueller, Lacey, the G.992 Specification, and

Johnson does not render these independent claims obvious. Dependent claims 2, 3, 5-7, 9, 11, 12, 25, 28, and 30 are likewise not rendered obvious by the combination of Mueller, Lacey, the G.992 Specification, and Johnson for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Without acquiescing to the merits of this allegation, Applicants have cancelled claims 4, 8, 27, and 29 without prejudice to or disclaimer of the subject matter therein. Applicants contend that the canceling of these claims does not give rise to any implication regarding whether Applicants agree with or acquiesce to the rejection under 35 U.S.C. § 103(a). Accordingly, Applicants respectfully request that the rejection of claims 1-3, 5-7, 9, 11, 12, 24, 25, 28, and 30 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 10, 13- 17, 19-21, 26, and 31-34

Claims 10, 13-17, 19-21, 26, and 31-34 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mueller in view of Lacey, the G.992 Specification, and Johnson, and further in view one or more of the following:

United States Patent No. 6,396,531 to Gerszberg et al. ("Gerszberg");
United States Patent No. 7,027,405 to Khadavi et al. ("Khadavi"); and
United States Patent No. 7,391,780 to Stone et al. ("Stone").

Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

As discussed above, the combination of Mueller, Lacey, the G.992 Specification, and Johnson does not teach or suggest each and every feature of independent claims 1 and 24. Khadavi, Stone, and Gerszberg alone or any combination thereof, does not

provide the missing teachings or suggestions with respect to these independent claims nor does the Office Action so allege. Therefore, the combination of Mueller, Lacey, the G.992 Specification, and Johnson and one or more of Khadavi, Stone, and Gerszberg does not render independent claims 1 and 24 obvious. Dependent claims 10, 13-17, 19-21, 26, and 31-34 are likewise not rendered obvious by the combination of Mueller, Lacey, the G.992 Specification, and Johnson and one or more of Khadavi, Stone, and Gerszberg for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 10, 13-17, 19-21, 26, and 31-34 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Allowable Subject Matter

Claim 18

Claim 18 stands objected to as allegedly being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have rewritten claim 18 into independent form incorporating most of the features that were previously recited by independent claim 1. Applicants believe independent claim 18 is in condition for allowance despite not incorporating the features that are recited by dependent claim 15. Accordingly, Applicants respectfully request that the objection of claim 18 be reconsidered and withdrawn.

Comments on Statement of Reasons for Allowance

Applicants note the Examiner's Statement of Reasons for Allowance presented on page 19 of the Office Action. Applicants reserve the right to demonstrate claim 18 is allowable over the art made of record for further reasons related to any of their recited features. Applicants further contend that reservation of this right does not give rise to any implication regarding whether Applicants agree with or acquiesce in the reasoning provided by the Examiner.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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